



EPA Region 5 Records Ctr.



320250

May 31, 2007

VIA OVERNIGHT MAIL

Ms. Linda Mangrum
Remedial Enforcement Services Section
U.S. Environmental Protection Agency
77 West Jackson Blvd., SR-6J
525 West Allegan Street
Chicago, Illinois 60604-3590

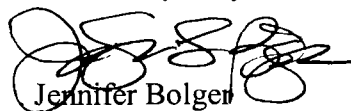
Re: Request for Information Pursuant to Section 104(e) of CERCLA for the Residential Portion of the USS Lead Refining, Inc. Site, 5300 Kennedy Avenue (the area bounded by Chicago Avenue to the north, Parish Avenue to the east, USS Lead to the south and Aster Avenue to the West), East Chicago, Indiana

Dear Ms. Mangrum:

We are responding on behalf of Johnson Controls, Inc. ("JCI") to the United States Environmental Protection Agency ("U.S. EPA") Information Request pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act concerning the USS Lead Refining, Inc. site as further described above. Please find JCI's responses enclosed herein as well as a copy of a JCI's response to a similar Information Request for this site from 1991. JCI's 1991 response also included approximately seven banker boxes of documents. Since that time, JCI's knowledge and/or use of that site has not changed. Based upon recent conversations with Mr. Kaiser of U.S. EPA, we agreed that JCI did not need to reproduce the seven bankers boxes of documents from the 1991 response. However, JCI has provided a copy of the written response to the 1991 request and is incorporating by reference its 1991 response to this response.

If you have any questions about these responses, please feel free to contact me. Also, please direct any further communication regarding the referenced site to me.

Yours very truly,



Jennifer Bolger

Enclosures

cc: Steven Kaiser (w/enclosure)
Kimberly Walker (w/enclosure)
Terry Wussow (w/enclosure)

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Enclosure 2

QUESTIONS

1. Identify all persons consulted in the preparation of the answers to these questions.

**The following people were consulted in the preparation of this response.
Contact with these people should be made through:**

**Jennifer Bolger
Gonzalez, Saggio & Harlan, LLP
225 E. Michigan Street, Fourth Floor
Milwaukee, WI 53202
(414) 847-1365 direct
(414) 277-8521 fax
jennifer_bolger@gshllp.com**

**Kimberly Walker, Group Counsel, Johnson Controls Battery Group, Inc.
Terry Wussow, Senior Lead Buyer, Johnson Controls Battery Group, Inc.**

2. Identify all documents consulted, examined, or referred to in the preparation of the answers to these questions, and provide copies of all such documents.

See JCI's previous response to the U.S. EPA's 104(e) request for this facility dated December 1991 attached hereto as well as the documents produced by JCI in response thereto which were delivered to the U.S. EPA in 1991.

3. If you have reason to believe that there may be persons able to provide a more detailed or more complete response to any question in this Information Request or who may be able to provide additional responsive documents, identify such persons.

See JCI's previous response to the U.S. EPA's 104(e) request for this facility dated December 1991 attached hereto as well as the documents produced by JCI in response thereto which were delivered to the U.S. EPA in 1991.

4. List your EPA Identification Numbers.

See JCI's previous response to the U.S. EPA's 104(e) request for this facility dated December 1991 attached hereto as well as the documents produced by JCI in response thereto which were delivered to the U.S. EPA in 1991. Please note that the Owosso facility and the Milwaukee facility have since closed.

5. Identify the acts or omissions of any person, other than your employees, contractors, or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants that may have migrated to or been deposited upon the Site.

JCI has no direct knowledge of any acts or omissions of any person, contractors, or agents that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants that may have migrated to or been deposited upon the Site. See JCI's previous response to the U.S. EPA's 104(e) request for this facility dated December 1991 attached hereto as well as the documents produced by JCI in response thereto which were delivered to the U.S. EPA in 1991.

6. Identify all persons, including current and former employees of your company and its contractors and subcontractors, having knowledge or information about the generation, transportation, treatment, placement, disposal, or other handling of hazardous substances at the Facility, or the migration or disposal of hazardous substances at the Site.

See JCI's previous response to the U.S. EPA's 104(e) request for this facility dated December 1991 attached hereto as well as the documents produced by JCI in response thereto which were delivered to the U.S. EPA in 1991.

7. Did you and/or your predecessors loan, finance, provide or acquire equipment that came to be located at the USS Lead Refining, Inc. facility, at 5300 Kennedy Avenue, East Chicago, Indiana, and that was or could have been used in a battery and/or metal reclamation or recycling process?

No.

8. Please provide information detailing the operations and use of any equipment through a business relationship with USS Lead Refining, Inc.

N/A

9. If the answer to question 7, above, is "yes" please provide the following: **N/A**

- Information regarding the agreement or sale through which the equipment was provided to USS Lead Refining, Inc. The information should include, but not necessarily be limited to, the date of the agreement, the terms of the agreement, a copy of the agreement, and the motivation for entering into the agreement;
- A description of the equipment that includes its use, function, manufacturer, size, cost and material makeup. Provide any photographs or other documents that depict or describe the equipment.

10. Did you and/or your predecessors have any contract agreements with USS Lead Refining, Inc. in which there was either an exchange of materials, equipment and/or services? If so, please provide copies or summaries of these contracts. Summaries should include the name and address of the company and the basis of the exchange. Also, include the start and end dates of the agreements.

JCI had agreements with USS Lead Refining, Inc. for the exchange of materials and services, but for not equipment. See also JCI's previous response to the U.S. EPA's 104(e) request for this facility dated December 1991 attached hereto as well as the documents produced by JCI in response thereto which were delivered to the U.S. EPA in 1991.

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125th
Anniversary
1866-1991

WRITER'S DIRECT NUMBER

December 23, 1991

312-853-2214

RECEIVED

DEC 26 1991

BY MESSENGER

LEGAL DEPT.

Ms. Evette Bryant
U.S. Environmental Protection Agency
5HSM-TUB-7
230 South Dearborn
Chicago, Illinois 60604

Re: Johnson Controls, Inc.'s Response to the Request
for Information for the USS Lead Refinery, Inc.
Site, East Chicago, Indiana

Dear Ms. Bryant:

We are attorneys for Johnson Controls, Inc. ("Johnson Controls"). This letter and the attached Response of Johnson Controls, Inc. constitute the response of Johnson Controls to various identical United States Environmental Protection Agency ("U.S. EPA") Information Requests ("Information Request") pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), and Section 3007 of the Resource Conservation and Recovery Act ("RCRA") concerning the USS Lead Refinery, Inc. Site ("Site").

Johnson Controls received four (4) Information Requests from U.S. EPA addressed as follows: (1) Globe Union Inc. (Globe Battery Div.), 1150 East State Street, Geneva, IL 60134, dated September 23, 1991; (2) Globe Union Inc. (Globe Battery Div.) P.O. Box 591, Milwaukee, WI 53201, dated September 23, 1991; (3) Johnson Control Battery Division, P.O. Box 248, Owosso, MI 48867, dated November 5, 1991; and (4) Johnson Control Battery Division, Globe Battery, 300 South Glengarry Dr., Geneva, IL 60134, dated November 5, 1991. We are submitting this combined response in accordance with our discussions and correspondence with Mr. Brett Warning of your office.¹

¹ We note that Johnson Controls purchased Globe Union, Inc. on October 10, 1978.

Ms. Evette Bryant
December 23, 1991
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Although Johnson Controls has made diligent efforts to comply with the Information Request and has provided detailed responses to the Information Request in the attachment to this letter, Johnson Controls sets forth the following general objections to the Information Request to preserve its rights.

1. Johnson Controls objects to the Information Request to the extent that the information requested does not reasonably relate to: (i) the identification, nature, or quantity of materials which have been generated, treated, stored, disposed of at, or transported to, the Site; (ii) the nature or extent of a release or threatened release from the Site; or (iii) ability to pay for or perform a cleanup. To this extent, the questions exceed the authority granted to U.S. EPA under Section 104(e) of CERCLA. Likewise, to the extent that the Information Request does not relate to hazardous waste, it exceeds the authority granted under Section 3007 of RCRA.

2. Johnson Controls objects to the Information Request to the extent that the instructions, definitions, and questions contained therein, both individually and collectively, are arbitrary and capricious, unduly burdensome, overbroad, vague, unreasonable, and/or an abuse of discretion. See, e.g., U.S. v. Morton Salt Co., 338 U.S. 632, 652 (1950); Dow Chemical Co. v. Allen, 672 F.2d 1262 (7th Cir. 1982).

3. Johnson Controls objects to the Information Request to the extent that it encompasses information that is not relevant to the USS Lead Site. See, e.g., U.S. v. Lehman, 887 F.2d 1328, 1336 (7th Cir. 1989).

4. Johnson Controls objects to Instruction Number 4, which requires Johnson Controls to supplement its responses to the Information Request. U.S. EPA lacks statutory authority under CERCLA and RCRA to require ongoing supplementation of its Information Requests.

5. Johnson Controls objects to Instruction Number 6, which requires Johnson Controls to respond to information or documents in the possession of its attorneys, to the extent that it requires Johnson Controls to divulge information protected by the attorney-client privilege, the work-product doctrine, or other privileges pursuant to the Federal Rules of Civil Procedure. Neither CERCLA nor RCRA requires a party to divulge such information in response to Information Requests. Johnson Controls reserves its right to assert these privileges if necessary.

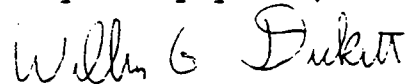
Ms. Evette Bryant
December 23, 1991
Page 3

6. Johnson Controls objects to Instruction Numbers 6 and 7 to the extent that they require Johnson Controls to interview former employees. Such a request is unreasonable, unduly burdensome, and overbroad. A corporation is not generally required to supply information solely within the personal knowledge of former employees, United States v. Ciba Corp., 16 Fed. R. Serv. 2d 95, 96 (D.N.J. 1971), unless such former employees were current employees at the time of commencement of the action, General Dynamics Corp. v. Selb Manufacturing Co., 481 F.2d 1204, 1210 (8th Cir. 1973), cert. denied, 414 U.S. 1162 (1974). Johnson Controls also objects to Instruction Numbers 6 and 7 to the extent that they require Johnson Controls to interview all current employees who may have knowledge of the operations, hazardous substance use, storage, treatment, releases, spills, disposal or handling practices of Johnson Controls between 1906 and 1985. Such a request is unreasonable, unduly burdensome, and overbroad.

7. Johnson Controls objects to Instruction Numbers 7 and 8, which require that Johnson Controls submit a "due diligence affidavit" and "personal knowledge affidavits." The request for such affidavits exceeds the statutory authority of U.S. EPA.

If you should have any questions about this response, please feel free to give me a call.

Very truly yours,



William G. Dickett

Attachment

cc: Thomas J. Courtney
Dennis P. Reis
Mark Chutkow

**RESPONSE OF JOHNSON CONTROLS, INC.
TO U.S. EPA INFORMATION REQUESTS
FOR THE USS LEAD REFINERY, INC. SITE**

1. **Identify all persons consulted in the preparation of the answers to these Information Requests.**

The following people were consulted in the preparation of this response. Contact with these people should be made through:

Thomas J. Courtney
Johnson Controls, Inc.
5757 North Greenbay Avenue
P.O. Box 591
Milwaukee, WI 53201

Thomas J. Courtney, Counsel
Terry Wussow, Senior Lead Buyer
Jean M. Beaudoin, Manager Environmental Relations
Jordan Harwood, Manager Environmental Control
Kermit Kirby, Plant Manager, Geneva, IL facility

2. **Identify all documents consulted, examined, or referred to in the preparation of the answers to these Requests and provide copies of all such documents.**

See enclosed documents.

3. **If you have any reason to believe that there may be persons able to provide a more detailed or complete response to an Information Request or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.**

George Gange, former Vice President Sales, USS Lead, currently Manager of Industrial Sales, Hammond Lead Products, Inc., P.O. Box 6408, Hammond, IN 46325-6408.

Robert Smuda, former sales representative, USS Lead (address unknown).

4. **List the U.S. EPA Identification numbers of the Respondent.**

The U.S. EPA Identification numbers for the Geneva, IL, Owosso, MI, and Milwaukee, WI facilities are as follows:

<u>Facility</u>	<u>USEPA ID Number</u>
Geneva, IL	ILD980502470
Milwaukee, WI:	
E. Keefe Ave.	WID000808840
N. Teutonia Ave.	WID000808857
N. Green Bay Ave.	WID000808865
Owosso, MI	MID058816927

5. Identify all persons, including you, who may have:

a. disposed of or treated materials at the Site;

See below.

b. arranged for the disposal or treatment of materials at the Site;

See below. See also response to Request Number 6.

c. arranged for the transportation of materials to the Site (either directly or through transshipment points) for disposal or treatment. Such persons will hereinafter be referred to as "generators"; or,

See below. See also response to Request Number 6.

d. knowledge or information about generation transportation, treatment, disposal or other handing of hazardous substances you contractors, or by prior owners and/or operators.

See below.

Johnson Controls answers Request Number 5a. - 5d. as follows.

No entity disposed of or treated materials at the Site, arranged for the disposal or treatment of materials at the Site, or arranged for the transportation of materials to the Site for disposal or treatment. However, the following entities may have sent materials to the Site or otherwise dealt with USS Lead:

Allied Smelting, Milwaukee, WI
Remy Battery Co., Milwaukee, WI
Challenger Battery Corp., Waukesha, WI
Wisco Battery (Exide Corp.), Racine, WI
The Courtney Company, Milwaukee, WI
Storage Battery Systems, Inc., Menomonee Falls, WI
Powersource Battery Corp., Campbellsport, WI
Exide Corp., Logansport, IN
Exide Corp. (General Battery), Frankfort, IN
Delco-Remy Div. General Motors, Muncie, IN

Prestolite (Allied-Signal), Vincennes, IN
GNB Industrial Batteries, Kankakee, IL
KW Battery, Skokie, IL
Acme Battery Mfg., Co., St. Louis, MO
Crown Battery Mfg., Co., Fremont, OH
Votmaster Company, Inc., Corydon, IA
Vulcan Lead Products, Milwaukee, WI
Kester Solder Co., Des Plaines, IL
Hammond Lead Products, Inc., Hammond, IN
DuPont
Taracorp
NL Industries
Powerlab
Gould/GNB
Master Metals
RSR
S&R Breaker
Solder & Ammunition Manufacturers in Chicago Area
O&C (Oxide & Chemical)
Samuels

The following former USS Lead employees may have additional knowledge regarding the Site:

George Gange (See response to Request Number 3.)
Robert Smuda (See response to Request Number 3.)
Joe Smolen - V.P. Manufacturing
Don Bidwell - General Manager
Richard Liscum - Chief Acct.
R. Pulliam - V.P. and Mgr.
J. Garrison - V.P.

6. For each and every instance in which a generator performed any of the actions specified in parts a. - c. of the previous question:

a. identify the generator;

See below.

b. identify the persons who may have directly or indirectly transported or otherwise brought any materials, including municipal solid waste, to the site;

See below.

c. identify all persons who may have directly or indirectly transported or otherwise brought any materials, including municipal solid waste, to the site;

See below.

- d. describe the nature, including the chemical content, characteristics, physical state (e.g., solid, liquid) and quantity (volume and weight) of all hazardous materials involved in each such arrangement;

See below.
- e. state whether any of the hazardous materials identified in subpart e. above exhibit any of the characteristics of a hazardous waste identified in 40 CFR Section 261 Subpart C;

See below.
- f. state whether any of the hazardous materials identified in subpart e. are listed in 40 CFR Section 261 Subpart D;

See below.
- g. state whether any hazardous substances at the Site are RCRA hazardous wastes;

See below.
- h. in general terms, describe the nature and quantity of the non-hazardous materials involved in each such arrangement;

See below.
- i. describe the nature and quantity of any municipal solid waste involved in any such arrangement;

See below.
- j. identify the owner of the hazardous materials involved in each such arrangement;

See below.
- k. describe all tests, analyses, analytical results or manifests concerning each hazardous material involved in such transactions;

See below.
- l. describe as precisely as possible any and all of the locations at which each hazardous material involved in such transactions actually was disposed or treated;

See below.

- m. identify the person who selected the location to which the hazardous materials were to be disposed or treated;

See below.
- n. identify who selected the Site as the location at which hazardous materials were to be disposed or treated;

See below.
- o. state the amount paid in connection with each such arrangement, the method of payment, and the identity of the person involved in each arrangement;

See below.
- p. describe where the persons identified in Subparts l. and m. of this question intended to have the hazardous materials involved in each arrangement treated or disposed and all documents or other information (written or oral) evidencing their intent;

See below.
- q. describe all intermediate Sites to which the hazardous materials involved in each arrangement were trans-shipped, or at which there were stored or held, any time prior to final treatment or disposal;

See below.
- r. describe what was done to the hazardous materials once they were brought to the Site;

See below.
- s. describe the final disposition of each of the hazardous materials involved in each arrangement;

See below.
- t. describe the measures taken by the generator to determine how and where treatment or disposal of the hazardous materials involved in each arrangement would actually take place;

See below.
- u. describe type, condition and number of containers in which the hazardous materials were contained when they were disposed, treated, or transported for disposal or treatment and describe any labels, numbers or other markings on the containers;

See below.

- v. identify every date on which waste materials were so accepted or transported.

See below.

Johnson Controls answers Request Number 6a. - 6v. as follows.

Johnson Controls did not arrange for the treatment or disposal, or arrange with a transporter for transport for treatment or disposal, of any hazardous materials or substances at the Site. However, between approximately 1974 and 1986, Johnson Controls did transport the following materials to the Site for resource recovery:

1. Spent lead acid batteries:
Usually box-like units comprised of lead plates and conductors; plastic, paper, fiberglass, or wood separators; sulfuric acid electrolyte; and hard rubber or plastic case.
2. Lead drosses:
Solid dusty to metallic material, primarily made of lead and lead oxide.
3. Lead scrap:
Scrap battery plates and other lead pieces.
4. Sump mud:
Lead oxide/lead sulfate paste.
5. In-plant junk batteries:
Usually box-like units comprised of lead plates and conductors; plastic, paper, fiberglass or wood separators; and hard rubber or plastic case.
6. Baghouse dust:
Solid particulate, primarily made of lead oxide.

These materials were transported to the Site in trucks which were owned and operated by Johnson Controls and which likely originated from the Geneva facility and possibly from the Milwaukee or Owosso facilities. The spent lead acid batteries and the in-plant junk batteries were presumably broken, smelted and refined into secondary lead at the Site. The other materials were presumably smelted and refined into secondary lead at the Site.¹

7. Describe the nature of your business that produced hazardous or non-hazardous substances to be disposed of at the Site; (i.e., electroplating, solvents used . . .).

¹ Johnson Controls did not purchase the Owosso facility until July 1, 1972.

Johnson Controls did not produce hazardous substances to be disposed of at the Site. However, for your information, Johnson Controls is in the business of lead acid battery manufacturing.

8. **Provide copies of all contracts, shipping documents or other business documents including receipts relating to the transportation, storage and/or disposal of waste materials at the above referenced Site.**

Johnson Controls had no involvement with any waste materials at the Site. Rather, Johnson Controls transported materials to the Site for resource recovery. The enclosed documents relate to such resource recovery.

9. **Identify all liability insurance policies held by Respondent from 1906 to 1985. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, nonsudden, or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.**

Johnson Controls' insurance policies are available for inspection by U.S. EPA at Johnson Controls' corporate headquarters in Milwaukee, Wisconsin.

10. **Identify all of Respondent's current assets and liabilities and the person(s) who currently own or are responsible for such assets and liabilities.**

We have enclosed a copy of Johnson Controls' 1990 Annual Report, which contains details of Johnson Controls' financial status and other corporate information. We can provide more information upon request.

11. **Identify all subsidiaries and parent corporations of Respondent.**

See response to Request Number 10.

12. **Identify the managers and majority shareholders of Respondent and the nature of their management duties or amount of shares held, respectively.**

See response to Request Number 10.

13. **Identify the form of business organization of Respondent.**

a. If a Corporation:

- (i) provide a copy of the Articles of Incorporation and By-Laws of the Respondent; and,**

See response to Request Number 10.

- (ii) provide copies of financial statements for the past five fiscal years, including, but not limited to, those filed with the Internal Revenue Service.**

See response to Request Number 10.

- 14. For each and every question contained herein, if information or documents responsive to this Information Request are not in your possession, custody or control, then identify the persons from whom such information or documents may be obtained.**

See response to Request Number 3.

- 15. Identify all leaks, spills or releases of any kind into the environment of any hazardous substances, pollutants or contaminants that have occurred at or from the Site. In addition, identify:**

We have no direct knowledge of any leaks, spills, or releases that have occurred at or from the Site.

a. when such releases occurred;

N/A.

b. how the release occurred;

N/A.

c. the amount of each hazardous substance, pollutant, or contaminant so released;

N/A.

d. where such releases occurred;

N/A.

e. any and all activities undertaken in response to each such release or threatened release, including the notification of any agencies or governmental units about the release.

N/A.

- f. any and all investigations of the circumstances, nature, extent or location of each release or threatened release including the results of any soil, water (ground and surface), or air testing undertaken; and,

N/A.

- g. all persons with information relating to these releases.

N/A.

16. Did any leaks, spills or releases of hazardous materials occur on the Site when such materials were being:

We have no direct knowledge of any leaks, spills, or releases of hazardous materials on the Site.

- a. delivered by a vendor;

N/A.

- b. stored (e.g., in any tanks, drums, or barrels);

N/A.

- c. transported or transferred (e.g., to or from any tanks, drums, barrels or recovery units); or

N/A.

- d. treated?

N/A.

17. Has soil ever been excavated or removed from the Site?

We have no direct knowledge as to whether soil has been excavated or removed from the Site.

Unless the answer to the preceding question is anything besides an unequivocal "no," identify:

- a. amount of soil excavated;

N/A.

- b. location of excavation;

N/A.

- c. manner and place of disposal and/or storage of excavated soil

N/A.

d. dates of soil excavation;

N/A.

e. identity of persons who excavated or removed the soil;

N/A.

f. reason for soil excavation;

N/A.

g. whether the excavation or removed soil contained hazardous materials and why the soil contained such materials;

N/A.

h. all analyses or tests and results of analyses of the soil that was removed from the Site;

N/A.

i. all persons, including contractors, with information about (a) through (h) of this Information Request.

N/A.

18. Provide a list of transporters which Respondent has utilized for transportation for disposal or treatment of waste materials, including hazardous substances, at the USS Lead Site.

See response to Request Number 6.